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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/603,043	06/24/2003	Jason P. McDevitt	KCX-375-CON (16068.1)	1869
22827	7590	09/06/2005	EXAMINER	
DORITY & MANNING, P.A. POST OFFICE BOX 1449 GREENVILLE, SC 29602-1449			COLE, LAURA C	
			ART UNIT	PAPER NUMBER
			1744	

DATE MAILED: 09/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/603,043	Applicant(s) MCDEVITT ET AL.	
	Examiner Laura C. Cole	Art Unit 1744	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 June 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 46-70 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 46-56 is/are allowed.
- 6) ☒ Claim(s) 57-67, 69 and 70 is/are rejected.
- 7) ☒ Claim(s) 68 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 07 January 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>06302005</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claim 70 is rejected under 35 U.S.C. 102(b) as being anticipated by Adams, IV, USPN 3,696,821.

Adams, IV discloses the claimed invention including a first hollow member (12, there are two separate elements marked "12" in the Figures) having an open end (where finger "15" is inserted) the hollow member having a surface with a texture (also a physical surface inherently has a texture, wherein "texture" is defined as "the distinctive physical composition or structure of something, especially with respect to the size, shape, and arrangement of its parts" according to *The American Heritage® Dictionary of the English Language, Fourth Edition Copyright © 2000 by Houghton Mifflin Company*), a second hollow member (other portion "12") having an open end (where other finger "15" is inserted), and a connecting portion (11') wherein the connecting portion comprises dental floss (Column 2 Lines 41-45).

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

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2. Claims 57-62 and 65-67 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hahn, USPN 5,953,783 in view of Ness, USPN 2,041,262.

Hahn discloses the claimed invention including a hollow member (12, 22; Figure 8) having an open end for the insertion of the finger (opening where finger "70" enters, Figure 8), the hollow member defining a texturized surface capable of cleaning teeth (26, 28, 30, or 32), the hollow member is an elastic nonwoven (Column 3 Lines 7-11) comprising an elastic component and a non-elastic component (Column 6 Lines 58-61; "a portion of the cap is replaced with elastic", the non-elastic component may also be the texturized surface with is pile loops, Column 3 Lines 13-20). The texturized surface comprises looped bristles (Column 3 Lines 15-20). The hollow member includes a closed end located opposite each open end (see Figure 8, closed end opposite where opening is provided for finger "70"). The first panel (24) is attached to a second panel (cleaning elements "26" and "28" are attached to second panels "30" and "32"), the first panel comprises the elastic nonwoven (Column 3 Lines 7-11) and the second panel comprises a non-elastic material (the pile surface contained on "30" and "32"). There is an additive applied to the cleaning device (Column 6 Lines 17-25). Hahn does not disclose a second hollow member and a connecting portion, wherein the second hollow member is structurally identical to the first hollow member.

Ness discloses a device for cleaning teeth that includes a first hollow member (8a) and a second hollow member (8b) both having texturized surfaces (9) connected together by a connecting portion (8c) so that a user can effectively clean teeth and

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gums with a minimum of labor without difficulty. Both the first hollow member and second hollow member have identical structures.

It would have been obvious for one of ordinary skill in the art to modify the teeth cleaning device of Hahn to have a second hollow member having the same structural properties as the first hollow member and to have the first and second hollow members connected by a connecting portion, as Ness teaches, so that a user may clean more of a surface area at one time thereby minimizing the labor and difficulty in cleaning teeth.

3. Claims 57-59, 61-66, and 69 are rejected under 35 U.S.C. 103(a) as being unpatentable over Adams, IV, USPN 3,696,821 in view of McCarver et al., USPN 5,362,306.

Adams, IV discloses the claimed invention including a first hollow member (12, there are two separate elements marked "12" in the Figures) having an open end (where finger "15" is inserted), the hollow member having a surface with a texture (a physical surface of the device inherently has a texture, wherein "texture" is defined as "the distinctive physical composition or structure of something, especially with respect to the size, shape, and arrangement of its parts" according to *The American Heritage® Dictionary of the English Language, Fourth Edition Copyright © 2000 by Houghton Mifflin Company*) that is *capable* of cleaning teeth and gums, a second hollow member (other portion "12") having an open end (where other finger "15" is inserted), and a connecting portion (11') wherein the connecting portion comprises dental floss (Column 2 Lines 41-45). Adams, IV does not disclose that at least the first hollow member or

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the second hollow member contains an elastic nonwoven comprising an elastic component and a non-elastic component.

McCarver et al. discloses a form fitting surgical device for covering an extremity that forms a hollow member (see Figures; Column 3 Lines 12-27) and is made from an elastic nonwoven comprising an elastic component (36) and a non-elastic component (32 or 34). The hollow member includes a first panel (layer 36) attached to a second panel (layer 34), while the second panel comprises a non-elastic material (Column 4 Lines 62-64, as it is made from a "film"). The device is a laminate that is bonded, specifically stretch-bonded (Column 2 Lines 32-41).

It would have been obvious for one of ordinary skill in the art to modify Adams, IV so that both the first and second hollow members of Adams, IV are comprised of an elastic nonwoven comprising an elastic component and a non-elastic component, as McCarver et al. teach, so that the device is form fitting to a finger.

Allowable Subject Matter

4. Claims 46-56 are allowed.
5. Claim 68 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
6. The following is a statement of reasons for the indication of allowable subject matter: None of the prior art made of record teaches or suggests a plurality of spaced apart microcuts. Also, none of the prior art made of record includes a cleaning device having a first hollow member having an open end for the insertion of a first finger, the

hollow member defining a texturized surface, a second hollow member having an open end, at least the first hollow member or second hollow member containing an elastic nonwoven comprising an elastic component and a non-elastic component, further wherein the texturized surface comprises a point unbonded material, the point unbonded material comprising a plurality of raised tufts surrounded by bonded regions.

Applicants Arguments

7. In the response of 20 June 2005, the Applicant contends that:

A. Applicants note that the present application describes various potential uses, other than cleaning teeth or gums, and the claim language specifically requires that the texturized surface be configured to clean the teeth and gums of a user.

B. Applicants define "texturized" as based in the specification, "texturized" refers to a base web having projections from a surface of the web in the Z-direction.

C. There is no motivation, teaching, or suggestion in coming Carr, Ness, or Rescigno in view of the elastic nonwoven material of McCarver et al.

D. Adams discloses cylindrical caps to engage fingers and are "preferably rigid" and there is no motivation to combine the elastic nonwoven surface (McCarver et al.) with the structure disclosed by Adams. There is no further motivation in combining Adams with Carr.

E. Adams does not disclose a texturized surface and it would not have been obvious to combine Adams to have the surface of Carr since the device of Adams is "rigid, possibly metal".

Response to Arguments

8. Applicant's arguments **A-C**, with respect to the 35 U.S.C. 112 rejection and to the rejections made of Carr, Ness, and Rescigno in view of McCarver et al. have been fully considered and are persuasive. The rejections have been withdrawn.

However, it is noted:

A. In describing "configured to clean the teeth and gums of a user" in the response of 20 June 2005, that the Applicant points out that the meaning of "configured to clean the teeth and gums of a user" denotes a particular use and not a structural limitation. Therefore, the Examiner has not given any weight to "configured to clean the teeth and gums of a user", which is a recitation of the intended use of the claimed invention and must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

B. In the response of 20 June 2005, the Applicant contends that the specification defines "texturized", however the claim as currently written does not further define applicant's interpretation of "texturized". A surface inherently has a "texture". In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., "texturized", a base web having projections from a surface in the Z-direction) are not recited in the rejected claim(s). **Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims.** See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

9. Applicant's argument **D** filed 20 June 2005 have been fully considered but they are not persuasive.

D. As mentioned above in Paragraph 3, it would have been obvious for one of ordinary skill in the art to modify Adams, IV so that both the first and second hollow members of Adams, IV are comprised of an elastic nonwoven comprising an elastic component and a non-elastic component, as McCarver et al. teach, so that the device is form fitting to a finger. Adams, IV additionally states that the thimbles "12" in some cases may be made from semi-rigid material (Column 2 Lines 15-16).

10. Applicant's argument **E** with respect to claim 70 has have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Laura C. Cole whose telephone number is (571) 272-1272. The examiner can normally be reached on Monday-Thursday, 7:30am - 5pm, alternating Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Kim can be reached on (571) 272-1142. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

lee

LCC

01 September 2005

John Kim

JOHN KIM
SUPERVISORY PATENT EXAMINER